

Draft Minutes  
CIVIL COMMISSION  
225 Spring Street, Fourth Floor, Room 4B  
Wethersfield, CT  
Monday, September 12, 2016  
2:00 pm.

Those in attendance: Hon. William H. Bright, Jr.; (chair), Hon. James W. Abrams; Hon. Barbara N. Bellis; Hon. Marshall K. Berger, Jr.; Hon. Aaron Ment; Hon. Cesar A. Noble; Hon. Angela Robinson; Hon. Mark H. Taylor; Hon. Robin L. Wilson; Atty. Agnes Cahill; Atty. David W. Cooney; Atty. David J. Crotta, Jr.; Atty. Joseph D. D'Alesio; Atty. Michael A. D'Amico; Atty. Karen DeMeola; Atty. Michael J. Dorney; Atty. Scott M. Harrington; Atty. Stuart C. Johnson; Atty. John J. Kennedy, Jr.; Atty. Robert M. Langer; Atty. Catherine Nietzel; Atty. Rosemarie Paine; Atty. Kelly E. Reardon; Atty. Richard A. Roberts; Atty. Richard A. Silver; Atty. Alinor C. Sterling; Atty. Elizabeth J. Stewart; Atty. William J. Sweeney; Atty. William P. Yelenak; and Atty. Angelo A. Ziotas.

Guest: Patricia Cruz Fragoso

- I. Welcome – The meeting was called to order by Judge Bright at 2:03 p.m. The commission members introduced themselves. Judge Bright talked about the role the Civil Commission has been playing in coming up with and reviewing proposals from the judges, the bar and the rules committee. The Civil Commission is the most active group in terms of the number of meetings held, and the number of proposals submitted to and reviewed on behalf of the Rules Committee. Judge Bright emphasized the importance of the input of the commission and emphasized the need to look at proposals from a global perspective of improving civil litigation rather than simply from an individual perspective.
- II. Approval of Minutes – Upon motion by Atty. Yelenak and second by Atty. Sweeney, the minutes from the meeting of March 14, 2016 were approved by those who had attended the March meeting. New members of the commission abstained from this vote.
- III. Overview of Civil Re-engineering Initiatives – Judge Bright briefly reviewed the many initiatives undertaken by the Branch in an effort to streamline the civil process as much as possible in order to address the interest of litigants in participating in a civil system that proceeds efficiently and without unnecessary expense to a fair resolution. Individual calendaring has been rolled out in all judicial districts. Judge Bright spoke about the importance of the initial status conferences that are part of the individual calendaring program, pointing out that budget problems have resulted in more limited resources, such as fewer staff. In response to a question about the individual calendaring status conferences, Judge Bright emphasized their importance as they provide an opportunity to eliminate some of the hearings currently held on motions and discovery disputes, and when done effectively, they have resulted in a reduction of court events.

Judge Bright mentioned that focus groups have been scheduled with the bar to provide an opportunity to obtain feedback on the individual calendaring program. Currently, focus groups are scheduled with the CTLA and the CDLA, with others to be scheduled with the CBA Litigation, Young Lawyers and Small Firm Practice Management sections. Individual calendaring will remain in place, and feedback is welcome.

Judge Bright also mention an upcoming meeting he is having with the Litigation, Young Lawyers and Business sections of the CBA regarding enhancements to the ways in which the Branch handles commercial cases through the complex litigation docket.

Finally, he spoke about the establishment of two mediation centers: one in Waterbury and one in Hartford. The centers have many features, including video-conferencing capability, wi-fi access, break-out rooms, and computers for lawyers' use. Judge Riley is assigned to the Hartford Mediation Center, and parties can opt to schedule mediations at the centers with J-ADR judges as well

- IV. Discovery Subcommittee Report – Atty. Yelenak reported on the work of the subcommittee. Uninsured and Underinsured Motorist Standard Interrogatories and Production were drafted by the subcommittee to address the ongoing question about the applicability of standard interrogatories to UIM cases that has resulted in motion practice. The subcommittee drafted standard discovery for both plaintiffs and defendants. In addition, at the suggestion of Judge Noble, the subcommittee drafted an addition to the plaintiff's premises liability interrogatories. Finally, he reported that the committee was looking for members of two workgroups: one to work on standard discovery for medical malpractice cases and the other, on standard discovery for employment matters.

The medical malpractice workgroup will include Attorneys Ziotas, Kennedy and Cahill. Some other names were suggested, and Judge Bright will contact another attorney regarding participating in this workgroup. Atty. Kennedy pointed out that there would be different sets of standard discovery: medical providers and hospitals will be the first sets drafted. The intent is to provide them for the December meeting.

Attorneys Glenn Duhl and Lewis Chimes will be invited to work on standard discovery for employment cases, which can be based largely on the existing employment litigation standard discovery in the federal courts.

The group then discussed the UIM drafts, beginning with the Plaintiff's Request for Production. After discussion, including the difficulty for the insurance company in retrieving some of the requested documents and the different language used in the introductory sections of requests for interrogatories and requests for production, several changes were made to the existing proposal, and staff will make certain that the language of the proposal incorporates the language in the newly-revised forms that will be effective January 1, 2017. Atty. Johnson moved that the second request in the proposal be amended to include the words "issued by the defendant company or one of the defendant's affiliated companies", but there was no second and the motion died.

Judge Abrams moved that the proposal as revised be submitted to the Rules Committee. Atty. Roberts seconded the motion. The commission voted in favor of the motion, with only Atty. Johnson voting against the motion.

Next, the group discussed the proposed plaintiff's interrogatories. Two changes were suggested: the removal of the definition of "you" in the introductory section as it is not pertinent to an insurance company, and the addition of a subpart asking the name and address of the person giving any statement in interrogatory #10.

Judge Abrams moved that the interrogatories as revised be submitted to the Rules Committee. Atty. Crotta seconded the motion. The members voted unanimously in favor of the motion.

The group then discussed the proposed defendant's request for production. Judge Wilson suggested adding the language from Forms 208 and 209 regarding worker's compensation. After discussion, the group agreed to add the questions from Form 209 to the defendant's proposed uninsured/underinsured motorist requests for production and to the interrogatories as well. After further discussion, the questions on medical information and any other information that relates to the damages will be added from the existing standard production requests (Form 205) to the proposed UIM requests for production.

The defendant's request for production in UIM cases were tabled to allow the subcommittee to make the changes and return to the commission in December.

Next, the commission discussed the defendant's standard interrogatories in UIM cases. Atty. Silver objected to the use of percentages in the proposed interrogatory #20. After extensive discussion, the following language was agreed upon: "State the percentage of loss of use or loss of function as provided by a medical service provider, if any." Interrogatory #28 will be revised similarly.

Atty. Yelenak that the proposed defendant's uninsured/underinsured motorist standard interrogatories be approved as amended and submitted to the Rules Committee. Judge Ment seconded the motion, and it was approved unanimously.

The final proposal from the subcommittee was to add two questions to the plaintiff's request for production in premises liability cases (Form 206). The additions request copies of written leases and extensions on the subject premises as well as copies of any contract or agreement regarding the maintenance and inspection of the premises.

Upon motion by Atty. Sweeney, and second by Atty. Cooney, the proposal was unanimously approved, and the proposal will be submitted to the Rules Committee.

- V. Workgroup on Civil Rules and Statutes Report – Judge Berger reported that the workgroup was proposing to amend Practice Book Sec. 13-2 to add a proportionality clause that is almost the same as Federal Rule 26(b)(1). He pointed out that this language is something that has been proposed by the Council of Chief Justices for all states. Extensive discussion ensued, including concerns over how this rule could be used, whether it applies to standard discovery matters; the impact of one party's limited resources on discovery; in what types of cases this kind of issue arises; whether the provision would require an evidentiary hearing or lead to many more hearings in general on discovery; the impact of such a provision on the state trial judges; the risk that the rule will make existing precedent on discovery questionable without replacing it with any reliable basis for deciding what is appropriate; whether the language should be added to the rule on the scope of discovery or to Sec. 13-5 on protective orders, where there would be a balancing of interests; the fact that the federal rules just moved a similar provision from the equivalent of 13-5 to the equivalent of 13-2; that putting the language in 13-5 will result in more discovery objections; the potential to make obtaining needed information even more difficult; the potential problems from the lack of specific criteria; and the suggestion that the proposed rule may be rendered unnecessary by the additional standard discovery the commission is developing, use of sanctions, motions for protective orders, and requirements for pre-motion conferences.

After discussion, Judge Bright proposed that the commission table the proposal to allow some research on the impact of proportionality on the federal courts and any of the state courts.

Upon motion by Judge Ment and second by Judge Noble, the committee voted unanimously to table the proposal until the December meeting.

Judge Bright, in Judge Berger's absence, then introduced the proposed changes to Sec. 13-8, which added the recently approved language from Sec. 13-10 on making specific objections to interrogatories and stating whether any responsive information is being withheld on the basis of the state objection. The proposal also specifically adds a reference to Sections 13-2 through 13-5 as governing any objections to discovery.

Upon motion by Judge Abrams and second by Atty. Nietzel, the commission unanimously voted to submit the proposal to the Rules Committee.

Judge Bright briefly discussed the proposal to amend Section 13-15 to make clear that there is a continuing duty to disclose if there is partial compliance or compliance made notwithstanding an objection.

Upon motion by Atty. Crotta and second by Atty. Paine, the commission unanimously voted to submit the proposal to the Rules Committee.

- VI. Upcoming Meeting Dates – The upcoming meeting dates are December 12, 2016 and March 13, 2017. The Commission may decide to schedule an additional meeting in June.

- VII. The meeting adjourned at 3:55 PM.